

West's Annotated Code of Virginia

Title 20. Domestic Relations

Chapter 6.1. Custody and Visitation Arrangements for Minor Children

VA Code Ann. T. 20, Ch. 6.1, Refs & Annos

Currentness

VA Code Ann. T. 20, Ch. 6.1, Refs & Annos, VA ST T. 20, Ch. 6.1, Refs & Annos

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Title 20. Domestic Relations (Refs & Annos)

Chapter 6.1. Custody and Visitation Arrangements for Minor Children (Refs & Annos)

VA Code Ann. § 20-124.1

§ 20-124.1. Definitions

Currentness

As used in this chapter:

“Joint custody” means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child’s primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

“Person with a legitimate interest” shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.

“Sole custody” means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

Credits

Acts 1994, c. 769; Acts 1997, c. 690; Acts 1999, c. 1028; Acts 2000, c. 830; Acts 2003, c. 229. Amended by Acts 2005, c. 890.

Notes of Decisions (27)

VA Code Ann. § 20-124.1, VA ST § 20-124.1

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Title 20. Domestic Relations (Refs & Annos)

Chapter 6.1. Custody and Visitation Arrangements for Minor Children (Refs & Annos)

VA Code Ann. § 20-124.2

§ 20-124.2. Court-ordered custody and visitation arrangements

Effective: July 1, 2009

Currentness

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that either party or both parties provide health care coverage or cash medical support, or both.

D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court may order an independent mental health or psychological evaluation to assist the court in its determination of the best interests of the child. The court may enter such order as it deems appropriate for the payment of the costs of the evaluation by the parties.

E. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order. A parent or other person having legal custody of a child may

petition the court to enjoin and the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and visitation of that child for any period of time up to 10 years if doing so is in the best interests of the child and such parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

#### Credits

Acts 1994, c. 769; Acts 1996, c. 767; Acts 1996, c. 879; Acts 1996, c. 884; Acts 1999, c. 574; Acts 2003, c. 520. Amended by Acts 2006, c. 665; Acts 2009, c. 713.

#### Notes of Decisions (122)

VA Code Ann. § 20-124.2, VA ST § 20-124.2

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VA Code Ann. § 20-124.2:1

§ 20-124.2:1. In camera interviews of child; record

**Currentness**

In any proceeding in a court of record to determine custody or visitation, when the court conducts an in camera interview of a minor child whose custody or visitation is at issue without the presence of the parties or their counsel, a record of the interview shall be prepared, unless the parties otherwise agree. The record of the interview shall be made a part of the record in the case unless a decision is made by the court that doing so would endanger the safety of the child. The cost of creating the record shall be taxed as costs to the parties to the proceeding.

**Credits**

Added by [Acts 2003, c. 1024.](#)

VA Code Ann. § 20-124.2:1, VA ST § 20-124.2:1

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VA Code Ann. § 20-124.3

§ 20-124.3. Best interests of the child; visitation

Effective: July 1, 2012

Currentness

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
9. Any history of family abuse as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and
10. Such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing. Except in cases of consent orders for custody and visitation, this communication shall set forth the judge's findings regarding the relevant factors set forth in this section.

**Credits**

Acts 1994, c. 769; Acts 1999, c. 634; Acts 2000, c. 466. Amended by Acts 2004, c. 221; Acts 2009, c. 684; Acts 2012, c. 358.

**Notes of Decisions (137)**

VA Code Ann. § 20-124.3, VA ST § 20-124.3

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VA Code Ann. § 20-124.3:1

§ 20-124.3:1. Repealed by Acts 2008, c. 809

Effective: July 1, 2008

Currentness

VA Code Ann. § 20-124.3:1, VA ST § 20-124.3:1

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VA Code Ann. § 20-124.4

§ 20-124.4. Mediation

Currentness

In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution evaluation session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter 20.2 ([§ 8.01-576.4 et seq.](#)) of Title 8.01. In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not reached on any issue through further mediation as agreed to by the parties, prior to the return date set by the court pursuant to [§ 8.01-576.5](#), the court shall proceed with a hearing on any unresolved issue, unless a continuance has been granted by the court. The fee of a mediator appointed in any custody, support or visitation case shall be \$100 per appointment and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to [subsection B of § 16.1-267](#).

Credits

Acts 1994, c. 769; Acts 2000, c. 768.

VA Code Ann. § 20-124.4, VA ST § 20-124.4

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VA Code Ann. § 20-124.5

§ 20-124.5. Notification of relocation

**Currentness**

In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation order a requirement that thirty days' advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case.

**Credits**

Acts 1994, c. 769.

**Notes of Decisions (1)**

VA Code Ann. § 20-124.5, VA ST § 20-124.5

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VA Code Ann. § 20-124.6

§ 20-124.6. Access to minor's records

Currentness

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician or the minor's treating clinical psychologist has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the meaning of the term "health record" or the plural thereof and the term "health care entity" shall be as defined in subsection B of § 32.1-127.1:03.

Credits

Acts 1994, c. 769; Acts 2000, c. 485. Amended by Acts 2005, c. 181; Acts 2005, c. 227.

Notes of Decisions (4)

VA Code Ann. § 20-124.6, VA ST § 20-124.6

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